

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
OFFICE OF THE MONTANA STATE AUDITOR  
HELENA, MONTANA

IN THE MATTER OF	)	CASE NO. SEC-2009-89
NEXT FINANCIAL GROUP	)	
2500 Wilcrest Drive, Suite 620,	)	
Houston, TX 77042,	)	
a broker-dealer firm;	)	TEMPORARY CEASE AND DESIST
	)	ORDER
GARY FALBER, individually, and in his	)	
capacity as a registered securities	)	
salesperson and investment adviser	)	
representative;	)	
	)	
RYAN FALBER, individually, and in his	)	
capacity as a registered securities	)	
salesperson and investment adviser	)	
representative,	)	
	)	
Respondents.	)	

The State Auditor in her capacity as Commissioner of Securities and Insurance of the State of Montana (Commissioner), pursuant to the authority of the Insurance Code of Montana, Mont. Code Ann. § 33-1-101, *et seq.*, hereby issues the following allegations of fact, proposed conclusions of law, order and notice of right to a public hearing:

**ALLEGATIONS**

1. The Department received a complaint on or about September 8, 2009. In the complaint a Montana citizen, identified herein as Complainant, alleged that after a single meeting on March 9, 2009, with G. and R. Falber, salespeople for NEXT, the Complainant signed documents that would direct Complainant's investment funds to be invested in the stock market using a strategy explained by G. and R. Falber that involved technical analysis and investing in and out of the market.

2. The Complainant told the Department Complainant transferred previous investment accounts from Charles Schwab and Waddell & Reed to the Falbers as well as providing a check for \$45,000 from Complainant's savings to the Falbers. Complainant told the Department the additional \$45,000 from savings was added to the investment because the Falbers indicated they would only accept investment accounts of at least \$200,000. Complainant's total investment with the Falbers is \$210,000.

3. The Falbers placed all of Complainant's funds in a JJNL Variable Fund, single premium annuity. Complainant alleges when the Falbers were questioned about the annuity purchase they indicated the original fund they discussed was no longer available.

4. Complainant alleges the Falbers were told Complainant had no interest in annuities due to a bad experience Complainant had with an AXA Equitable annuity.

5. Further, Complainant asserts a need for liquidity and an income stream because Complainant is a cancer survivor and needs access to the money.

6. G. and R. Falber reside in Wyoming. G. Falber is and, during the relevant period<sup>1</sup>, was registered with the Montana Securities Department as a broker/dealer salesperson and investment adviser for NEXT. R. Falber was registered with the Montana Securities Department as a broker/dealer salesperson and investment adviser representative during the relevant period.

7. On September 24, 2009, the Department received a compact disc containing information it requested from NEXT. A review of documents indicates Complainant held investments at Charles Schwab and Waddell & Reed prior to meeting with the Falbers. Additionally, Complainant had access to and withdrew funds from the Schwab account as needed.

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<sup>1</sup> The relevant period is from March 1, 2009, to the present.

8. Complainant's Schwab account consisted of individual equities and mutual funds having a value of approximately \$137,062 on February 28, 2009. Complainant's investments with Waddell & Reed were a group of dividend-generating mutual funds that had a value of approximately \$28,297 on February 28, 2009.

9. According to Complainant, between the JJNL Variable Fund and AXA, these two annuities represent nearly 100% of her liquid net worth. However, the JJNL Variable annuity application indicates the annuity only represents 20% of Complainant's net worth.

10. Complainant signed all the forms provided by the Falbers, but it appears the information gathered on the form was written in by one of the Falbers. The forms are all dated March 9, 2009. Both Falbers solicited Complainant for investing but only R. Falber's signature is on all documents requiring a representative's signature.

11. Complainant's NEXT new account form lists income and growth as Complainant's investment objectives. The JJNL Variable annuity does not provide an income stream. Furthermore, a review of the objectives of the JJNL Variable annuity indicates its performance is supposed to replicate the performance of the Dow Jones Consumer Services Index<sup>2</sup>, which does not meet the investment objectives of the Complainant reflected in the new account form.

### **CONCLUSIONS OF LAW**

1. The Montana State Auditor is the Commissioner of Securities (Commissioner) pursuant to Mont. Code Ann. §§ 30-10-107 and 2-15-1901.

2. The Commissioner has jurisdiction over this matter pursuant to Mont. Code Ann. §§ 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-305, and 30-10-309.

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<sup>2</sup> The Dow Jones U.S. Consumer Services Index measures the performance of consumer spending in the services industry of the U.S. equity market.



3. The administration of the Securities Act of Montana ("Act"), Mont. Code Ann. § 30-10-101, *et seq.*, is under the supervision and control of the Securities Commissioner pursuant to Mont. Code Ann. § 30-10-107.

4. The Commissioner shall administer the Securities Department to protect investors pursuant to Mont. Code Ann. § 30-10-102.

5. Respondents G. and R. Falber violated Mont. Code Ann. § 30-10-201 (13) (g) and ARM § 6.10.401 (2) (f) by recommending the sale of Complainant's Schwab and Waddell & Reed portfolios to purchase the JJNL variable annuity without grounds to believe the recommendation was suitable.

6. Respondents G. and R. Falber violated Mont. Code Ann. § 30-10-201 (13) (g) and ARM 6.10.401 (2) (f) by purchasing the JJNL variable annuity without authorization.

7. Respondents G. and R. Falber violated Mont. Code Ann. § 30-10-301 (1) (b) by making untrue statements of material fact and omitting material facts regarding the suitability of the JJNL variable annuity to Complainant in connection with the offer, sale and purchase of this security.

8. Respondent NEXT violated Mont. Code Ann. § 30-10-201 (13) (k) by failing to reasonably supervise the Falbers to ensure compliance with the Montana Securities Act.

### **ORDER**

Pursuant to Mont. Code Ann. § 30-10-305, it appears to the Commissioner that the above named Respondents committed acts constituting violations of the Montana Securities Act, including acts constituting insurance fraud, and, therefore, hereby orders Respondents to cease

and desist any actions or activity wherein Respondents act in violation of the Montana Securities Act.

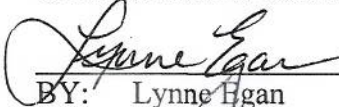
### NOTICE

Respondents are notified that the Commissioner has issued this order temporarily ordering them to cease and desist violating the insurance code. If Respondents wish to contest the allegations herein, they shall make a written request for a hearing to Roberta Cross Guns of this office within 15 days of receipt of this order. The hearing shall then be held within 20 days of the Commissioner's receipt of the hearing request unless otherwise agreed by the parties. If no hearing is requested within 15 days of receipt of this order by Respondents, and the Commissioner orders none, this cease and desist order shall become permanent.

Should Respondents request a hearing, they have the right to be accompanied, represented and advised by counsel. If the counsel Respondents choose has not been admitted to the practice of law in the State of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973), and *Montana Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

DATED this 3<sup>rd</sup> day of May, 2010.

MONICA LINDEEN  
Commissioner of Securities and Insurance

  
BY: Lynne Egan  
Deputy Securities Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 4<sup>th</sup> day of May, 2010, by US mail, certified, first-class postage paid, to the following:

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Gary Falber  
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